

Appl. No.: 09/438,957  
Amdt. dated 02/17/2006  
Reply to Office action of 11/17/2005

### REMARKS

Applicant appreciates the thorough review of the present application. The final Official Action rejects Claims 1-9 and 23-34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,876,983 to Goddard et al. ("Goddard").

As explained more fully below, the pending claims of the present application are patentably distinguishable from the cited reference. In light of the subsequent remarks, which do not raise new issues, Applicant respectfully requests reconsideration and allowance of the claims.

***A. The Rejection of Independent Claims 1-2, 4-5, and 7-8 under 35 U.S.C. § 103(a) is Overcome***

Goddard discloses a system and method for facilitating aggregate shopping. In particular, Goddard discloses that the system includes a plurality of user client devices, a plurality of supplier client devices, and a database server system communicating with the user and supplier client devices. The database server system is configured to maintain, and make available to potential purchasers, a catalog of products. The database server system also enables potential purchasers to become members of one or more groups by assuming an obligation to purchase a product at a price lower than a specified maximum price. In addition, the database server formulates a bid request and submits the request to potential sellers to enable sellers to submit tender offers and then determines which seller has submitted the best selling conditions (i.e., lowest price). Moreover, each group is maintained in the database for a predetermined period of time, where members may join or leave the group. However, once the predetermined period of time has ended, the user is required to purchase the product.

Independent Claims 1-2, 4-5, and 7-8 recite methods, systems, and computer-readable mediums, respectively, that include aggregating and satisfying demand for items. For example, independent Claims 1-2, 4-5, and 7-8 recite that the information for each different user is aggregated independent of a commitment by the different users to purchase the items, and the different users can determine whether to commit to purchasing an item even after submitting a request for an item or travel product. Thus, independent Claims 1-2, 4-5, and 7-8 do not require users to commit to purchase an item when aggregating information based on the users' requests for the items. Users are capable of reviewing items before committing to purchase. If a user is

Appl. No.: 09/438,957  
Amdt. dated 02/17/2006  
Reply to Office action of 11/17/2005

interested in purchasing an item, the user may submit a commitment to purchase, which could take the form of an unsecured reservation or a purchase using a credit card or other payment method. However, if a user decides not to make a purchase, the user is not required to do so.

The Examiner acknowledges that Goddard does not disclose that users can determine whether to commit to purchase an item, but takes Official Notice that leaving the option to commit to purchase a product has been common knowledge in the art. Applicant initially requests that the Examiner provide a reference or other evidence supporting this assertion, as this conclusion is not "instant and unquestionable" as being well known at the time of the invention (MPEP § 2144.03) ("Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known."). In particular, Applicants traverse taking of Official Notice as the Examiner has previously relied upon references that have required a commitment to purchase (e.g., Walker '415 and Shkedy '024 patents) such that evidence demonstrating that a user may determine whether to commit to purchase an item is even more warranted.

Moreover, such Official Notice and its combination with Goddard are in direct contrast to the actual teachings of Goddard, thereby rendering such a combination improper for lacking the requisite motivation or suggestion. In this regard, Applicant respectfully submits that Goddard does not teach or suggest aggregating information reflecting demand for items from different users "independent of a commitment by the different users to purchase the item" and that "the different users can determine whether to commit to purchasing the item," as recited by independent Claims 1-2, 4-5, and 7-8. Goddard specifically discloses a diametrically opposed approach in which potential purchasers assume an obligation to purchase a product at a price no higher than a specified maximum price, and further in which the potential purchasers are required to purchase the product after a predetermined period of time has elapsed (see abstract; col. 3, lines 58-63; col. 5, lines 22-31; col. 11, lines 37-42; and col. 14, lines 52-58). For example, Goddard discloses: "The general terms and rules which apply to all shopper groups include--the final price will never exceed the prescribed maximum price; a shopper who joined a shoppers group must purchase the product if all the predefined conditions are fulfilled." Col. 11, lines 37-42 (emphasis added).

Appl. No.: 09/438,957  
Amdt. dated 02/17/2006  
Reply to Office action of 11/17/2005

Independent Claims 1-2, 4-5, and 7-8 recite that information is aggregated independent of a commitment to purchase and that users can determine whether to commit to purchase an item. In contrast, users of the Goddard system are obligated to purchase a product when conditions of purchase have been satisfied and a predetermined time period has expired. Although Goddard discloses that members of a shoppers group may remove themselves from the group while the group is active (i.e., the predetermined period of time has not elapsed), members must purchase the product if all predefined conditions are fulfilled. Moreover, potential purchasers must submit personal profile information, such as mode of payment, when joining a group (col. 11, lines 1-7); this type of information would not otherwise be necessary unless purchasers were obligated to purchase the item. Therefore, Goddard simply discloses that members may remove themselves from a group during a predetermined time period, but Goddard does not teach or suggest that members of the group may determine whether to commit to purchasing an item when a seller's offer has been received and/or awarded to the seller offering the lowest selling price.

Thus, Goddard does not teach or suggest the claimed invention and, in fact, teaches directly away from the optionality built into the claimed invention. Moreover, there is no motivation or suggestion to combine Goddard with the subject matter for which Official Notice was taken (even assuming evidence supporting the Official Notice could be provided as requested above) since Goddard actually teaches away from the very point for which Official Notice is taken. Still further, such unsupported reliance upon Official Notice without any reasonable motivation or suggestion to combine such Official Notice with Goddard effectively ignores or reads out claim recitations in direct contrast to the black letter law which requires all claim recitations to be meaningfully considered ((see MPEP § 2106(II)(C))). Consequently, Applicant submits that the rejection under 35 U.S.C. 103(a) of Claims 1-2, 4-5, and 7-8, as well as the claims that depend therefrom, is therefore overcome.

***B. The Rejection of Independent Claims 29-31 under 35 U.S.C. § 103(a) is Overcome***

Independent Claims 29-31 recite that users are provided with at least two proposed responses and are able to evaluate the proposed responses. Applicant submits that this is not taught or suggested by Goddard. Indeed, such an approach runs counter to Goddard.

Appl. No.: 09/438,957  
Amdt. dated 02/17/2006  
Reply to Office action of 11/17/2005

Specifically, as discussed above, Goddard requires that the user be committed to purchase the item when conditions of purchase have been satisfied and a predetermined time period has expired. As recited in Claims 29-31, two different responses are provided to each user with each response including a proposal for providing an item to a respective user, which is unlike Goddard where the consumer has already committed to purchase a particular item such that a "proposed" response is unnecessary. Because the user submits an offer with an obligation to purchase a desired product, there is no teaching or suggestion within Goddard to provide a proposed response to the user which the user can elect to accept or decline as described above in conjunction with Claims 1-2, 4-5, and 7-8. Further, Goddard simply does not teach or suggest the ability to provide users with two separate results, as the user would not be committed to accept either result but could, instead, choose therebetween, which Goddard expressly teaches away from.

Additionally, as described above, Official Notice is not only improper, but there is no motivation or suggestion to combine Goddard with the subject matter for which Official Notice was taken (even assuming evidence supporting the Official Notice could be provided as requested above) since Goddard actually teaches away from allowing a user to choose between two alternative proposals.

Therefore, Claims 29-31 are distinct from the cited reference, and the rejection of Claims 29-31 under 35 U.S.C. 103(a) is overcome.

***C. The Rejection of Independent Claims 32-34 under 35 U.S.C. § 103(a) is Overcome***

Independent Claims 32-34 recite a method, system, and computer-readable medium, respectively, that attempt to get bids for an order independent of setting a maximum price and receive bids from suppliers, where the price set by the supplier for the item is independent of a maximum price set by the consumer or otherwise. The system of Claims 32-34 is advantageous in that it allows the consumer to check pricing for the request without having to first commit to a maximum price. For example, buyers may submit a request for travel for particular origin and destination locations and dates, and may receive proposed packages and associated prices. As

Appl. No.: 09/438,957  
Amdt. dated 02/17/2006  
Reply to Office action of 11/17/2005

such, the buyer is not required to input a maximum price or incrementally adjust a maximum price in order to determine a travel package that is acceptable to the buyer.

Applicant respectfully submits that Goddard does not teach or suggest providing information to the suppliers independent of any predetermined maximum price for the items and providing a proposed response to the different users, where the users can determine whether to commit to purchasing the item based at least on the price set by the supplier, as recited by independent Claims 32-34. Thus, Claims 32-34 are distinguishable for at least those reasons discussed above with respect to independent Claims 1-2, 4-5, and 7-8, as Goddard requires an obligation to purchase a product at a price lower than a specified maximum price when conditions of purchase have been satisfied and a predetermined time period has expired.

In addition, Goddard does not teach or suggest that aggregated information is provided to suppliers independent of any predetermined maximum price. Specifically, Goddard requires that the consumer input a maximum price with an offer to purchase a product and expressly teaches away from allowing the consumer to join a shoppers group without specifying or otherwise accepting a maximum offer price. For example, Goddard discloses that "potential purchasers [] use their respective user client devices to become members of at least one purchasers group of potential purchasers of designated products by assuming an obligation to purchase [the] product at a price no higher than a specified maximum price" (col. 3, lines 58-63).

Furthermore, Applicant reiterates that Official Notice is not only improper, but there is no motivation or suggestion to combine Goddard with the subject matter for which Official Notice was taken (even assuming evidence supporting the Official Notice could be provided as requested above). In this regard, Goddard teaches away from allowing users to provide aggregated information to suppliers independent of any predetermined maximum price for the items, as well as allowing users to commit to purchase an item based on the price set by the supplier.

As such, Applicant respectfully submits that Claims 32-34 are distinguishable from the cited reference, and the rejection under 35 U.S.C. 103(a) is therefore overcome.

Appl. No.: 09/438,957  
Amdt. dated 02/17/2006  
Reply to Office action of 11/17/2005

### CONCLUSION

In view of the remarks presented above, which do not raise new issues, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

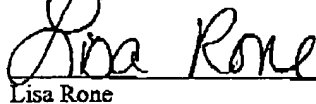


Trent A. Kirk  
Registration No. 54,223

Customer No. 00826  
ALSTON & BIRD LLP  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

#### CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at facsimile number (571) 273-8300 on the date shown below.



Lisa Rone

2/17/2006  
Date

CLT01/4782885v1

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☒ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☒ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☒ **OTHER:** \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**